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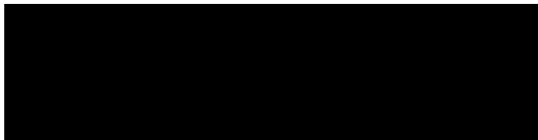
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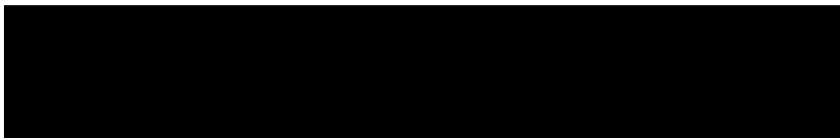


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAY 29 2007**  
LIN 06 009 52076

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Maura Deadrick*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an assistant professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we withdraw the director's adverse findings.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Management Information from the State University of New York (SUNY) at Buffalo. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, information systems studies, and that the proposed benefits of his work, improved integration of business systems, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner received his Ph.D. from SUNY Buffalo. In 2002, the petitioner accepted an assistant professor position at Missouri State University, where he remained as of the date of filing. The petitioner's research focuses on developing integrative business information systems through the application of ontologies, multi-agent systems and mobile computing technologies.

The petitioner submitted letters from his Ph.D. research director, [REDACTED] and one of his Ph.D. dissertation co-chairs, [REDACTED] who both discuss the petitioner's Ph.D. research and their continued collaborations after the petitioner moved to Missouri State University. [REDACTED] first discusses the petitioner's three-stage model for designing mobile computer systems that allows information sharing and communication. This model addresses the issues of moving patterns and security requirements while minimizing design costs. This work, however, had not been published as of the date of filing.

Next [REDACTED] discusses the petitioner's work in the area of Ontology-Driven Information Systems (ODIS). An ontology defines fundamental concepts underlying a specific area of information system. The petitioner demonstrated "that a well-developed ontology helped system developers and users to communicate unambiguously, to share their knowledge seamlessly, and to increase their knowledge reuse." The petitioner's article reporting this work had been moderately cited as of the date of filing.

The petitioner also developed an ontology for Multiagent-based Integrative Business Information Systems (MIBIS) by identifying eight fundamental concepts underlying the development process for these systems. [REDACTED] affirms that this work has theoretical and practical implications and that it was well received when presented. In addition, the petitioner developed a MIBIS modeling grammar, Multiagent-based Integrative Business Modeling Language (MibML), that provides guidelines for system developers and reduces system development time. This work was presented at a conference where, according to [REDACTED], an endowed professor at the University of Connecticut, it was one of 40 out of 412 papers nominated for a Best Paper Award.

The petitioner also overcame system developer confusion in determining what concepts to use to model real-world phenomena by developing unambiguous mapping between the grammatical concepts and real-world concepts. The petitioner presented this work and had revised it for publication as of the date of filing.

explains that one of the main challenges faced by systems developers is modeling the real world phenomena and sharing and reusing knowledge among different stakeholders. The petitioner introduced "software agent," a software program that is able to mimic human behavior, as the basic unit for modeling information systems that can support business systems and information integration.

an associate professor at Oakland University, indicates that he chaired the mini-track that nominated the petitioner's paper for a Best Paper Award. affirms that the MIBIS concept is relevant for companies involved in supply chain management and electronic business where coordination among different companies is required. He continues that the petitioner's grammar allows system developers to "stamp out software agents, and therefore facilitates MIBIS modeling and design."

Significantly, Director of Research at the College of Business Administration, University of South Florida, asserts that the petitioner's MibML research "is of particular interest to my research team and me. We are adapting MibML for building an agent-based fraud detection system that could be useful in many domains including healthcare and insurance."

Similarly, an associate professor at Arizona State University, asserts that he has cited the petitioner's MIBIS related work not only in his publications but in his research proposals. He further indicates that one of his Ph.D. seminars includes the petitioner's papers as part of a discussion set. , a distinguished professor at Arizona State University, confirms his usage of one of the petitioner's as yet unpublished papers to support a Ph.D. seminar.

In addition to the above letters, three of which are from independent researchers applying the petitioner's work, the petitioner submitted his publications, conference presentations, evidence that one of his articles has been moderately cited and materials confirming his role as one of three co-chairs for a "mini-track" at the 2005 American Conference on Information Systems (AMCIS 2005). The petitioner also serves as a member of the Executive Committee for the Special Interest Group on Ontology Driven Information System (SIG-ODIS), although that group was only founded in 2005 by the petitioner's own Ph.D. research director. As noted by the director, not all of the manuscripts that cite the petitioner's work bear any indicia of publication. That said, the petitioner also submitted an Internet search result confirming the moderate citation of the petitioner's work. Moreover, on appeal, the petitioner provides the source of each article citing his own work. Also on appeal, the petitioner submits evidence that his articles are listed as required reading for courses at the University of South Florida and the Université de Lausanne.

Given the evidence of record *in the aggregate*, including but not limited to the evidence discussed above, we are persuaded that the petitioner has demonstrated an influential record of success in his field. It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the information systems community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the

national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.